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GRAND JURIES

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What follows is a transcript of an interview from The Final Straw Radio with an anarchist legal worker at Standing Rock, where they discuss the details surrounding the grand jury and the subpoena that one Water Protector has received. While there are already plenty of materials and resources online for anyone to peruse who wants to know about grand juries and how they work to target and isolate communities of resistance, this particular conversation breaks down the attempted veil of secrecy that grand juries cast while highlighting the many forms of resistance to this particular grand jury at Standing Rock.

Original podcast can be found at thefinalstrawradio.noblogs.org

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Since the time that this episode of the Final Straw podcast was recorded, Steve Martinez, a Water Protector and grand jury resistor appeared at the U.S. District Court in Bismarck, North Dakota. On January 4th, 2017 Steve gave a statement outside the courthouse amidst dozens of other Water Protectors who braved the single digit temperatures to stand in solidarity.

My name is Steve Martinez. I have been subpoenaed to this federal grand jury. I refuse to cooperate with these proceedings on the grounds of not helping opposition towards water protectors. I will in no way condone or cooperate with this attempt to repress the movement here at Standing Rock. I know that by refusing to cooperate I will most likely be incarcerated. The loss of my own freedom is a small price to pay for keeping my dignity and standing up for what is right- the defense of the earth and all that is sacred. Mni Wiconi!

The motion to quash the subpoena was denied by the federal judge and a new subpoena was issued by the U.S. Attorney demanding that Steve appear on February 1st, 2017 in Bismarck.

What we know about grand juries¹ is that they have a long history of being used to target those in resistance to the state² and engaged in political or revolutionary movements. The purpose of this grand jury and all grand juries that target revolutionary people and communities is to cause division, manufacture prisoners of war, and create paranoia or suspicion amongst comrades. We will not be intimidated and resistance to this is only strengthening our resolve to kill this black snake and all the others.

Water protectors stand in resistance to this grand jury and all tools of state repression, be it on the ground through Morton County's violent tactics or in the shrouded secrecy of a grand jury courtroom. We will continue to build on the vibrancy of our resistance movement here at Standing Rock in order to destroy the pipeline, the grand jury and their world.

Water Protector Anti-Repression Committee

#blacksnakekillas #grandjurykillas

1 <http://grandjuryresistance.org/grandjuries.html>

2 <http://grandjuryresistance.org/recent.html>



The Final Straw

So we are here talking with an anarchist legal worker who has been participating in the Standing Rock resistance, and we're here to talk about the grand jury subpoena, which recently came to a Water Protector at Standing Rock. Would you briefly explain what a grand jury is for those listeners who don't know and how they have historically been used to divide and subdue radical movements?

Standing Rock

So what a grand jury is is a federal proceeding and it's intended to produce a federal felony indictment. So in order for a felony indictment to happen, there has to be some process, and it's typically a grand jury process, that determines whether there's enough evidence to proceed with a federal indictment and formal charges. And while grand juries are used as a way for U.S. attorneys to produce indictments for a wide array of things, they are especially used as a tool of repression towards political movements, resistance movements, and have a long history of that, going back to the origins of grand juries, which are a holdover from British legal proceedings. So it goes back a really long way, but most recently people have memories of their use around political resistance movements, like

the Black Panther Party, American Indian Movement, even more recently earth and animal liberation movements.

TFS

Gotcha. And I think that we can remember people like Jerry Koch who got sent to prison for nine months for doing grand jury resistance in response to a bombing that happened in Times Square in New York City. I was wondering if you would talk a little bit about what the specifics of grand juries tend to look like on the ground, or how participants of grand juries, what people have to go through if they are subpoenaed for a grand jury.

SR

So the first step that typically happens when somebody's called to be a witness at a grand jury, or provide testimony or physical evidence, is that you would be served a subpoena by a federal agent. So in the case of Water Protectors at Standing Rock, a federal agent could be an agent from B.I.A. (or Bureau of Indian Affairs), which is a federal policing force, but often times it would be an F.B.I. agent or even a U.S. Marshall who might serve you the subpoena. And then what that means is that you're required to attend the grand jury and provide information to them. So at a grand jury, they're unlike any other court proceeding, where normally there's a judge in the courtroom and you're allowed to have your own legal council present with you at a legal proceeding. But at a grand jury, there's no judge in the courtroom, the courtroom really belongs to the U.S. attorney and the prosecutor. And you are the person who's been called to the grand jury, you don't know for sure why you've been called because they operate in almost total secrecy. You don't know if you've been called just as a witness, you don't know if you're the target, or the person that they are potentially trying to indict. And so you're also not allowed to have your legal council in the room with you. You can, and you really should, obtain legal council if you've been subpoenaed to a grand jury, because they can provide you support in the process of resisting a grand jury.

So once you've been served and you're required to go to the grand jury, you have a few options as a person who is working to resist the grand jury. Your first option is that you can just ghost. That's a really hard option for most people because it means you can't talk to your friends, your loved ones, your family, your comrades, it means you can't go to the normal places that you go to. It means that you probably need to leave your hometown, or maybe even the country as a whole. And some people have done that, and

the people have done that have had very difficult experiences. It also puts you at risk still of being in contempt of court and my understanding is that if you just ghost after you've received a subpoena, that the contempt can turn into a criminal contempt versus a civil contempt, which I'll explain a little bit as well.

And so your other option would be, well basically some people have never walked into a grand jury room. They would just show up, hold a press conference with all their friends, loved ones, comrades, and legal council and read a statement in front of the courthouse, or in front of the grand jury room, and that says "We're never gonna talk to you. I stand in solidarity with my community and this is a tool of repression, and I'm part of a impenetrable wall of silence." And people have certainly taken that tactic.

Another tactic that people used to resist a grand jury, if they've been called to testify, would be to enter the grand jury room and provide only their name. And then any question that they're asked after giving their name to the U.S. attorney, they would invoke their 5th amendment right, which is their right to not say anything that would incriminate yourself. What happens typically though, is that a prosecutor then says, "Okay we get it, you're using your 5th amendment right." And then they might let you go for the day, or they might right on the spot go have a hearing with a judge in another room, and at that hearing the judge would almost certainly impose on you immunity. And I say impose because a lot of people have the idea that immunity would be a good thing, right? That they can't say the things that you're saying in the testimony against yourself, but the thing is they can still use it against your friends, they can still use it against the movement as a whole, they can still use it against all kinds of people, you might not be aware of how they would use it.

And so then once you've had immunity imposed on you, you're no longer allowed to invoke your 5th amendment right against self-incrimination. And so when you refuse to answer questions, then the U.S. attorney is going to say, "Okay I get it, you're not going to answer any of my questions." They're going to have another hearing with a judge. And that hearing is a civil contempt hearing. Which is not a criminal proceeding, it's a civil proceeding. And what grand juries do is if you refuse to cooperate, they try to coerce your cooperation out of you. And if you're charged with civil contempt in that hearing, then they can incarcerate you for up to the length of the grand jury.

Like you mentioned before with Jerry out in New York, he was incarcerated for around nine months. People in the Pacific Northwest who were resisting a grand jury in 2012 were incarcerated for around four-to-six months, and that's a coercive incarceration that's meant to pull testimony out of you. But they're not allowed to punitively incarcerate you, which is like all semantics right? We all know that all incarceration is punitive. It's all meant to punish us for something. But they're using tricky legal language, so that it's not punitive, "It's just coercive, we're just trying to torture all of your testimony out of you by incarcerating you and removing you from your community and your loved ones."

But, because people have used this tactic of being really public and saying that not only are they not personally going to cooperate, and they personally have put up a wall of silence, but also that they're whole community is in a silent resistance to this grand jury. Then that can be used as evidence further that you're not ever going to cooperate, and something then that can happen is called a grumbles motion, which is a fantastic name and it's actually named for people who were a married couple who resisted a grand jury, it has a really beautiful history of its own.

A grumbles motion can be filed by your council, by your attorney, and it's basically saying "This person has made it evident and clear that they're not going to cooperate with this grand jury, and this incarceration has gone from coercive to punitive." Which is illegal for a civil proceeding, which is what that is, it's a civil contempt charge. And so that's how Jerry was able to get out of coercive incarceration, and that's how many other people have been able to do that. But I think it also really ties into this public display, community-wide, nationally, even internationally, that people have taken up around grand jury resistance, especially in this last decade, of being really firm and open from the onset, from the moment they receive a subpoena, instead of being quiet as a community which is what the feds hope will happen. That you get scared and that you self-isolate. But instead, build your own vibrancy in our communities of resistance and that same loving solidarity that we have, we continue that as a way of resisting.

TFS

Yeah, like you said it seems like so many things in the legal system, this just seems like a pretty diabolical framework for doing this sort of thing and I think that like so many things, the success of it just rides on isolation,

it rides on personal despair or being worn down. And it seems really interesting to me, and really telling, this grand jury subpoena has come pretty hot on the heels of the supposed easement of the Dakota Access Pipeline. I was wondering if you would speak about the timing of this grand jury subpoena.

SR

I think it's smart for us to be looking at the whole picture like that. You know on November 20th there was a battle, a kind of stand off, at the backwater bridge, which is just on the North end of the Oceti Sakowin Camp, there at Standing Rock, which is the Northern camp, which originally had been an overflow camp for Sacred Stone and Rosebud on the reservation side. And that battle that happened on November 20th, which a lot of people have now burned into their memory, not just across the so-called U.S. but really across the world because of the use of water cannons in sub-freezing temperatures by Morton County Sheriffs. There was also a young woman, Sophia Wilansky, whose arm was horrifically injured, and another woman named Vanessa who might lose her eye due to the insane force that was used by Morton County. So just a little more than a week, a week and a half later, is when this grand jury was convened. And what we know from on the ground is that those things that happened on November 20th on that bridge, what happened to Sophia Wilansky, we know that Morton County Sheriffs were already trying to victim blame her, saying that somehow she had blown her own arm off. I personally was on that bridge and I can tell you that no one was blowing their own arms off there. What I saw was people who were not, it wasn't even street fighting in that setting, it was really just people who are so incredibly frustrated and incredibly broken at the continued horrific use of colonial forces in their territories and in their homelands. And I saw a lot of young indigenous people who were just trying to turn that knob on the pressure valve and let some pressure off of them. It's not just been building for the last month at Standing Rock, but really people are letting the pressure off of ancestral trauma that goes back more than five hundred years. And I think all of that context is really important when we're looking at this grand jury situation as well. What we know about this grand jury is that it has something to do with, at least in part, with what happened on the bridge on November 20th. And we know so far that they are looking at potentially eco-terrorism that's taking place at Standing Rock, which isn't taking place. The only terrorism that's taking place is the terrorism of the state.

The person who received this first subpoena, we believe has been targeted because of their close proximity to Sophia Wilansky. This is a person who helped to transport Sophia when her arm was injured and get her to medical care. And so there's very little information that any body has right now about what exactly this grand jury is trying to put together information-wise. But at the end of the day, we don't need to know for sure. We know it's being used as a tool to repress the work that's happening with water protectors at Standing Rock, and potentially to connect it to other resistance movements to extraction and environmental terrorism that's happening at the hands of capital and the state.

And that first subpoena was received a day before that announcement from the Army Corps (of Engineers) about the easement. And I don't think that the timing is coincidental. I think the timing is probably pretty intentional. You had a lot of people distracted feeling like they won, and I don't want to say that that was an entirely false victory, but it's not a permanent victory. In the camp, when the announcement of the denial happened, and there were cheers, you know rippling throughout the camp for the entire day and night, people celebrating and feeling excited. And I do want to recognize that that only happened because of people's collective power. The Army Corps didn't deny the easement, the people who've been fighting this pipeline denied the easement and will continue to deny it, and will continue to deny Dakota Access Pipeline and their ability to do what they're doing.

I want to recognize that while that is a victory, it's a victory of one battle in a long-game war. What's happening is that the state, while people are distracted by the victory of that particular battle, are doing the backdoor dealing with the grand jury and that they're trying to prey on people who are in resistance to extraction and to the Dakota Access Pipeline, and really to colonialism in general, and imperialism in general. This is a movement about indigenous sovereignty, and not just about one pipeline. But I think that the timing is really purposeful, and this is also a movement where a lot of people are really new to being in resistance. A lot of people are really new to political and social organizing, and so what is important and the work that's happening amongst legal workers and supporters at the camp right now is that because there's so many new, fresh people, it's also a ripe environment for the feds to prey on people who might not understand that what feels like innocuous testimony they might give to a federal agent, in or out of a grand jury room, that information is never innocuous to the state. While it might seem like not a big deal to say that you ate dinner

with so-and-so or yes once you had coffee with so-and-so, the state can then use that to socially map an entire movement of resistance, and that's why people have really taken on this work, running full speed ahead, and moving as quickly and strategically as possible to disseminate the information and make sure that people aren't just distracted by the victory of one battle, because there's a whole war that we're trying to fight right now.

TFS

I think that's a fantastic point because I've been seeing a lot of discussion about "Yay we won! We can go home now!" But I was wondering, maybe you've already answered this as much as you want to, but I was wondering if you had any thoughts on how real the easement is, or how permanent you think it is. Do you think that people will just come back and start building once the regime has flipped, or what are your thoughts on that?

SR

Things up there (at Standing Rock) are in a pretty delicate situation. The tribal government of Standing Rock and their chairman Dave Archambault, you know in the beginning he said that a re-route would never be a victory of Standing Rock and for Sioux Nation, and the only victory would be a complete block of the Dakota Access Pipeline. Well now you have Dave Archambault, who came to the camp and drove around in his personal pick-up truck, announcing to people that they have won, and that people could return to their homes. And what is suspected to be happening with this denial of the easement by the Army Corps, they're denying the easement in that spot at the Oahe Lake, which is actually just a lake that's resulted by the damming of the Missouri River, which is a whole other history that I encourage people to look into, the way that the Missouri River has been a point of struggle for the people at Standing Rock and the Sioux Nation for many, many years.

And so denying the easement in this one tiny spot on Lake Oahe on the Missouri River is not a victory, because we all, tens of millions of people, rely on the water from the Missouri River, the largest water basin in this region of the country. And putting the pipeline crossing of the Missouri River twenty miles north or, forty miles north, is still going to result in the same risks for everybody who drinks that water and for all the people of Standing Rock, and for all the people of Sioux Nation. And so I think it's important for people to be examining. You know, I'm an anarchist, I'm

always examining the people who hold power, and I think my indigenous comrades who are up there, or who have been up there at Standing Rock, they also come from a perspective that somebody who is in tribal government, these are governments that mirror colonial government and colonial power. And so there's something to question there. This isn't the ways in which traditionally indigenous people of Sioux Nation would have governed themselves. And if we're going to be talking about being in solidarity with indigenous sovereignty, then we as non-native people, allies and accomplices to them, need to be following their lead, but we also need to be critical of whose lead we're following and what kind of power those people are wielding.

But I think that there's a lot of people who are not going home, and I think that's really important to remind people right now, that there are hundreds and hundreds of people who will not be returning home. Over on the reservation side at Sacred Stone and Rosebud camp, there's still around six hundred or more people on that side, at Oceti Sakowin which I believe has actually been renamed to Oceti Oyate, which that rename has come from the indigenous youth council and from this person Chase Ironeyes who actually had run for U.S. Congress, he did not win, which I think is a good thing, so that he can stay in the community as opposed to ascending to actual power, but Chase Ironeyes is actually from Standing Rock. Him and his wife have been fighting this pipeline really along with the people, and he's stepped into a real role of leadership that I think is a positive role of leadership. And he is encouraging people along with Ladonna Allard whose land Sacred Stone is on, is one of the founders of Sacred Stone Camp, are telling people to not go home, that people who are already there need to continue holding space, to continue to fight this pipeline, but also to continue to assert their indigenous sovereignty over these lands that don't belong to North Dakota and were never ceded by the people of Standing Rock and Sioux Nation.

TFS

So earlier in the interview you spoke a lot about ways to resist grand juries; ghosting, press conferences and invoking the fifth amendment. Are there any other ways that you would recommend people fighting a grand jury scrutiny?

SR

Yeah, so the first thing, I said a little bit earlier, but I think it bears repeating, it's scary when you are the person who receives a subpoena, and it's meant to be scary, that's the tool that the state is using, is to be the big scary, secretive entity that intends to isolate you. So number one, reaching out to people and not staying silent I think is one of our strongest tools. And also, I think the grand jury that happened in the Pacific Northwest, the grand jury that happened with Jerry out in New York, I think those are really great recent examples, the grand jury with Carrie Feldman in Minnesota a few years ago as well, are really great examples of building not just localized community resistance, but really started reaching out through the very vibrant national networks of anarchist, anti-authoritarian and radical people. And so I think doing that as well, reaching out in through all the networks that we have, whether they're political or personal networks, and building these ways of resisting together.

Also the Water Protector Legal Collective and the National Lawyer's Guild have a really strong presence up there at Standing Rock and they're doing a lot of work in the camp and out of the camp to help mount resistance to this grand jury and offer the support necessary. So just as a heads' up to any person who, because people who are possible targets for subpoenas for this grand jury, so many people have come and gone from Standing Rock, that you could be back home in Ohio and receive a subpoena. You don't have to be at Standing Rock or in North Dakota or that region of the country to be subject to this risk, and I don't say that to stoke any fear but just to be really honest with people, that you may have come and gone but this is still a possibility. So reaching out to the Water Protector Legal Collective as quickly as possible is really important because they're able to offer legal council that could represent you through the grand jury process, they're able to connect you to those networks of resistance that are already existing if you yourself aren't already plugged into them.

Water Protector Legal Collective has a website which is waterprotectorlegal.org, but if you received a subpoena, you should call them immediately. Twenty-four hours a day they have a hotline, and the number is 605-519-8180.

And also, right now people who want to help support grand jury resistance, donating to the legal collective fund is especially helpful. Not only does that legal fund that exists through the Water Protector Legal Collective

going towards supporting people's criminal cases, it's also going towards supporting the people who are up there doing legal work who've left their homes and their families back in their own communities and are up there doing that work. The amount of resource that's necessary to help 571 people, and that number of people with criminal cases is growing, to help those people with their criminal cases, also fighting a grand jury, also trying to support the people who have given up their lives at home to be engaged in full-time legal support. So donations are vital and that is a way that people at home and outside of Standing Rock can continue to support not just grand jury resistance but also all the people that are facing criminal charges as well.

TFS

I was wondering, you mentioned looking into the cases of recent grand jury resistance as a way to be more informed, but are there any other resources for grand jury resistance that you would recommend to listeners?

SR

Yeah, so I would say one of my number one favorite spots for grand jury resistance information is there's a lot of really great detailed information that's available through the Civil Liberties Defense Center in Eugene, OR, and their website is cldc.org, and they have a number of resources that are available on there, both for a person or people in a community that are thinking about grand juries but also resources available for legal workers or attorneys about grand juries and how to fight them when they are being used against people of political or social resistance. Other good stuff that's out there; Crimethinc has some information, also the Midnight Special Law Collective has a grand jury training available on their website which is midnightspecial.net, and there's also some really good history and information that's available through the Freedom Archives. On the Freedom Archives, if you just search on there, which is freedomarchives.org; you can search "grand jury" or "grand jury repression" or things like that. There's a lot of really good information on there, and there's a lot of really good historical context about how grand juries have been used against people in social and political movements. People like the Puerto Rican Independistas, people from the American Indian Movement, and the long history of grand jury use and FBI repression.

TFS

Do you have anything else that you'd like to add?

SR

I think the only thing I would want to add is I think that there's a lot of really exciting and beautiful and hopeful things that are coming out of this movement at Standing Rock. We're seeing that spirit of resistance spread from Standing Rock Reservation, which probably most people had never heard of until a few months ago, but that's spreading out not just across this country and continent but really globally, there's global solidarity for this. And I think, I really want to drive home to people who are non-native people who are allies and accomplices to Indigenous people who are in this struggle, that part of what I feel like our responsibility is, we're in solidarity with Indigenous people who are fighting for sovereignty, that we not only be in solidarity with them on the frontlines, we not only be in solidarity with them in those kind of glamorous moments of resistance, but that we be in continued solidarity with them when the repression, the inevitable repression comes raining down on those movements of resistance. And that we really take it very seriously that the grand jury, the feds, and local law enforcement, more importantly County law enforcement, that this isn't something that's just going to be happening in this next couple of months, that the repression that's going to be coming against people who are in struggle for indigenous sovereignty over their lands, their water, their communities, their spiritual practices, that this repression is going to last for a long time. I hope that non-native allies and accomplices are in it for the long haul as well.